

Panaji, 15th March, 2018 (Phalguna 24, 1939)

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OFFICIAL GAZETTE

GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There is one Extraordinary issue to the Official Gazette, Series II No. 49 dated 08-03-2018 namely, Extraordinary dated 12-03-2018 from pages 2237 to 2238 regarding Notification from Goa Legislature Secretariat.

GOVERNMENT OF GOA

Department of Agriculture

Directorate of Agriculture

Order

No. 2/9/95-AGR/2017-18/Part(I)/245

On recommendation of the Departmental Promotion Committee conveyed by Goa Public Service Commission vide their letter No. COM/II/11/2(3)/2011/1068 dated 13-02-2018, Government is pleased to promote Shri Madhav B. Kelkar,

Assistant Director of Agriculture to the post of Dy. Director of Agriculture, Group 'A' Gazetted, in the Directorate of Agriculture on regular basis in the pay matrix at Level-11 with immediate effect.

On promotion Shri Madhav B. Kelkar, shall continue at the same place of his posting i.e. on deputation to the post of Managing Director, Goa State Horticulture Corporation Ltd.

Shri Madhav B. Kelkar shall exercise his option within one month from the date of promotion to fix his pay in terms of F.R. 22(I) (a) (1).

By order and in the name of the Governor of Goa.

Nelson X. Figueiredo, Director & ex officio Joint Secretary (Agriculture).

Tonca-Caranzalem, 7th March, 2018.

Department of Civil Supplies and Consumer Affairs

Order

No. DCS/EST/Appt. PIO-AA/2017-18/497

In exercise of powers conferred under Section 5 of Right to Information Act, 2005, the Government of Goa is pleased to designate following officers as Public Information Officer and Appellate Authority with immediate effect.

Sr. No.	Name of office	Name of Public Information Officer	Appellate Authority
1.	Goa State Consumer Disputes Redressal Commission, Panaji-Goa	Registrar, Goa State Consumer Disputes Redressal Commission, Panaji	Hon'ble President, Goa State Consumer Disputes Redressal Commission, Panaji.
2.	Goa State Consumer Disputes Redressal Forum, North Goa District, Porvorim	Assistant Registrar, District Consumer Disputes Redressal Forum, North Goa, Porvorim	President, District Consumer Disputes Redressal Forum, North Goa, Porvorim.
3.	Goa State Consumer Disputes Redressal Forum, South Goa District, Margao	Assistant Registrar, District Consumer Disputes Redressal Forum, South Goa, Margao	President, District Consumer Disputes Redressal Forum, South Goa, Margao.

This issues with the approval of the Government.

By order and in the name of the Governor of Goa.

Mahesh V. Corjuenkar, Director & ex officio Joint Secretary (Civil Supplies & Consumer Affairs).
Panaji, 7th March, 2018.



Department of Labour

Order

No. 28/2/2018-LAB/165

Whereas the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Merck Limited, Usgao, Ponda, Goa, and it's workmen represented by the Merck Employees Union, in respect of the matter specified in the Schedule hereto (hereinafter referred to as the "said dispute");

And whereas the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter referred to as the "said Act"), the Government of Goa hereby refers the said dispute for adjudication to the Industrial Tribunal of Goa at Panaji-Goa, constituted under Section 7-A of the said Act.

SCHEDULE

"(1) Whether the action of the management of M/s. Merck Limited, Usgao, Ponda, Goa, in not conceding the following Charter of demands raised by the Merck Employees Union, is legal and justified?

CHARTER OF DEMANDS

Demand No. 1: Wage Scales and Classification:

(a) All the workmen should be given a rise of Rs. 14000/- p.m. in the existing monthly wages.

(b) The existing pay scales of all the workmen should be suitably revised.

Demand No. 2: Variable Dearness Allowance (VDA):

All the workmen should be given V.D.A. on the basis of AACPI (No. 1982 100) at Rs. 10/- for every point variation over Index.

The existing neutralization points should be revised suitably.

Demand No. 3: Service Increment:

All the workmen should be given service increment of Rs. 1,000/- per year according to their service mentioned below:-

- (1) Service upto 15 years : one increment i.e. Rs. 1,000/-.
- (2) Service upto 25 years : two increments.
- (3) Service 25 years and : three increments. above

Demand No. 4: Leave Facilities:

(A) Privilege Leave:

- (i) All the workmen should be given 40 days Privilege Leave per year with full pay. All the workmen should be given a right to accumulate 180 days PL.
- (ii) All the workmen should be given the facility of encashment of 30 days P.L. accumulated over the limit of 90 days.

(B) Casual Leave: All the workmen should be given 10 days CL every year with full pay.

(C) Paid Holidays: All the workmen should be given 12 paid holidays in a calendar year with full pay. List of the holidays should be fixed in consultation with the Union/Committee members.

(D) Sick Leave: All the workmen should be given 14 Sick Leave in a calendar year.

Demand No. 5: Allowances:

(A) House Rent Allowance: All the workmen should be given additional amount of Rs. 500/- per month as House Rent Allowance.

(B) Conveyance Allowance: All the workmen should be given additional amount of Rs. 500/- per month as conveyance allowance.

(C) Leave Travel Allowance: All the workmen should be given an increase Rs. 25,000/- from the existing L.T.A. every year as Leave Travel Allowance.

(D) Education Allowance: All the workmen should be given additional Rs. 500/- p.m. as education allowance.

(E) Service Allowance: All the workmen should be given additional Rs. 500/- p.m. as Service Allowance.

(F) **Shift Allowance:** The existing shift allowance should be revised as under:

2nd Shift - Rs. 60/-.

3rd Shift - Rs. 80/-.

(G) **Inconvenience Allowance:** All the permanent workmen should be given Inconvenience Allowance of Rs. 500/- residing upto 10 Km. and Rs. 700/- to workmen residing more than 10 Km. distance from the company.

(H) **Essential Service Allowance:** The existing Essential Service Allowance of Rs. 100/- should be increased to Rs. 500/-.

(I) **Staggered off Allowance:** The existing Staggered off Allowance of Rs. 100/- should be increased to Rs. 500/-.

(J) **Good Attendance Bonus:** The workmen who are not availing casual leave in a month should be paid Rs. 200/- as Good Attendance Bonus.

(K) **Festival Advance:** All the workmen should be paid an amount of Rs. 15,000/- as Festival Advance. The same should be recovered in 12 equal instalments.

Demand No. 6: Bonus:

All the workmen should be given Bonus @ 20% and Production Incentive of 20% ex-gratia of their total annual emoluments for three accounting years without ceiling.

Demand No. 7: Other Facilities:

(A) **Death Relief Fund:** In case of death of workman while in service, all the workmen should contribute their one day wage towards death relief fund and management should contribute an equal amount to the Death Relief Fund.

(B) **Employment to son/daughters:** Management should give preference to sons/daughters of the workmen for employment.

(C) The existing Mediclaim (domicillary) should be revised. Every workman should be given Rs. 5,000/- per annum.

(D) **Transport Facility:** Transport facility should be provided on Sunday for all shifts from Margao and Panjim.

(E) **Loan Facility:** The existing loan facility should be increased to Rs. 3/- lakhs per person without interest for 55 persons per year.

(F) **Medical Group Insurance:** The existing Medical Group Insurance should be increased from Rs. 5/- lakhs to Rs. 10/- lakhs.

(G) **Retirement Age:** The retirement age should be increased from 58 years to 60 years.

(H) **Recruitment:** New recruitments should be done for bargainable employees on retirement, death while in service etc.

(I) **Gardeners:** Three Gardeners working in the garden should be paid Rs. 700/- per day in addition to one month salary for Ganesh Chaturthi.

(J) **Employment to son/daughters:** To be discussed on the point of the C.O.D. effective of 01-07-2011 to 31-12-2014 in detail.

Demand No. 8: Effect:

All the above demands should be given with effect from 01-01-2015 to 31-12-2017.

(2) If the answer to issue No. (1) above is in the negative, then, what relief the workmen are entitled to?"

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 8th March, 2018.

Notification

No. 28/3/2018-LAB/Part-II/157

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 25-01-2018 in reference No. IT/23/11 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 6th March, 2018.

IN THE INDUSTRIAL TRIBUNAL AND LABOUR
COURT
GOVERNMENT OF GOA
AT PANAJI

(Before Mr. Vincent D'Silva, Hon'ble Presiding
Officer)

Ref. No. IT/23/11

Shri Sandeep Lotlikar,
Rep. by the President,
Goa State Co-operative Bank Ltd.
Employees Union,
Gurudutt Building, 3rd Floor,
Dr. Dada Vaidhya Road,
Panaji-Goa.

... Workman/Party I

V/s

The Managing Director
(In charge),
The Goa State Co-operative
Bank Limited,
EDC Complex, Patto Plaza,
Panaji-Goa.

... Employer/Party II

Workman/Party I represented by Shri Subhash Naik Jorge.

Employer/Party II represented by Ld. Adv. Shri M. H. Govekar.

AWARD

(Delivered on this the 25th day of the month of January of the year 2018)

By Order dated 09-08-2011, bearing No. 28/17/2011-LAB/300, the Government of Goa in exercise of powers conferred by Section 10 (1)(d) of the Industrial Disputes Act, 1947 (for short The Act), has referred the following dispute to this Tribunal for adjudication.

- (1) Whether the action of the management of M/s. Goa State Co-operative Bank Limited, Panaji, in deducting an amount of Rs. 8,928/- from the salary of Shri Sandeep Lotlikar, Clerk, towards the loan installment of M/s Mayur Shipping Private Limited, is legal and justified?
- (2) If not, what relief the workman is entitled to?"

2. Upon receipt of the reference, it was registered as IT/23/11 and registered A/D notices were issued to both the parties. Pursuant to service of notices, Party I filed a Claim Statement at Exhibit 4. Party II filed a Written Statement at Exhibit 5.

3. In short, the case of the Party I is that the Party II has employed a large number of Managers, Officers, Clerks and Sub Staff. The branch of the Bank is headed by a Branch Manager who runs the affairs of the branch with the help of Officers, Clerks and Sub Staff. The clerical and sub staff employees of the Bank are unionized. The wages and service conditions of clerical and sub staff employees of the Bank are governed by the settlements on wages and service conditions signed by the representatives of the Bank and Goa State Co-operative Bank Employees Union from time to time. As per the provisions of the settlement dated 09-11-2004, in case of any allegations of misconduct against any employee, firstly charge sheet has to be issued, enquiry to be held and only in case the allegations in charge sheet are proved, action can be taken against any employee for recovery of the money for proved misconduct against him.

The Party I is a permanent employee of the Bank/Party II and is working in the said Bank for the last several years as a clerk. In the year 2010, the Bank/Party II illegally and without any justification deducted an amount of Rs. 8,928/- from the salary of Party I wrongly claiming that the amount is recovered towards loan installment of M/s Mayur Shipping Private Ltd., a loanee who had obtained loan from the Party II.

4. The Party I addressed a letter dated 28-07-2010 to Party II pointing out that the action of the Bank is not legal and justified. The Party II replied to the said letter vide their letter dated 4-8-2010 but declined to return the money illegally deducted. The explanation given by the Bank in the said letter is not legally tenable and not justified. The Party II also replied to the letter addressed by the said union to the Labour Commissioner vide their letter dated 17-01-2011. The dispute was admitted in conciliation before the Assistant Labour Commissioner and Conciliation Officer and as there was no settlement, the Conciliation Officer submitted a report on failure of conciliation proceedings vide letter dated 16-05-2011. The action of the Bank/Party I in deducting an amount of Rs. 8,928/- from the salary of Party I unilaterally and without issue of charge sheet and without holding enquiry and without proving the charges against Party I is in violation of the provisions of the legally binding settlement between the Bank and the Union and in violation of principles of natural justice and in violation of provisions of labour law.

5. In the Written statement, the Party II claimed that the dispute referred to the Hon'ble Industrial Tribunal by the Government of Goa is not an 'Industrial Dispute' as defined under the provisions of Industrial Dispute Act, 1947 and hence, the Hon'ble Tribunal has no jurisdiction to try, entertain and decide the present dispute referred to it. The present claim filed by the Party I is frivolous, vexatious and abuse of process of law and hence the same is required to be dismissed in limine. The Party I was held responsible along with 7 other employees of the Vasco Branch to make good the loss suffered by the Bank on account of their gross negligence in the recovery of timely loan installments in the loan account of M/s Mayur Shipping Private Limited. The aforesaid action taken by them against the Party I is just and fair and therefore no reliefs be granted.

6. The Party I filed a rejoinder at Exhibit 6 denying the case put forth by Party II in the written statement.

7. Issues came to be framed at Exhibit 8.

8. In the course of proceedings, the parties arrived at an amicable settlement and filed the consent terms dated 22-01-2018 at Exhibit 35.

9. The consent terms are reproduced here-in-below:

1) That the Party II hereby pay a total sum of Rs. 52,526/- (Rupees fifty two thousand five hundred twenty six only) to the workman/Party I by Cheque, which is accepted by the workman/Party I as full and final settlement of his claim in the aforesaid matter.

2) On execution of these Consent terms, the Workman/Party I shall have no claim of whatsoever against the Bank/Party II in respect of the reliefs claimed by the workman in the above matter.

3) Parties agree to bear their own costs.

10. The above consent terms are signed by the workman, Shri Sandeep Lotlikar along with her representative, Shri Subhash Naik Jorge on behalf of Party I, so also Shri Anant M. Chodankar, Managing Director of Goa State Co-operative Bank Ltd., and Adv. Shri M. H. Govekar on behalf of Party II. I have gone through the consent terms filed as above, which in my view, are just and fair and in the interest of both the Workman/Party I as well as Employer/Party II and hence the same are accepted.

11. In view of above, I pass the following:

ORDER

- (i) The reference at the instance of Workman/Party I, stands disposed of in view of the consent terms filed by both the parties at Exhibit 35.
- (ii) No order as to costs.
- (iii) Inform the Government accordingly.

Sd/-
(Vincent D'Silva),
Presiding Officer,
Industrial Tribunal and
Labour Court.

Notification

No. 28/3/2018-LAB/Part-II/160

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 31-01-2018 in reference No. IT/50/96 is hereby

published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 6th March, 2018.

IN THE INDUSTRIAL TRIBUNAL AND LABOUR COURT GOVERNMENT OF GOA AT PANAJI

(Before Mr. Vincent D'Silva, Hon'ble Presiding
Officer)

Ref. No. IT/50/96

Shri Dattu S. Naik,
Rep. by the General Secretary,
GAAL Workers Union,
Honda, Satari, Goa. ... Workman/Party I

V/s

Mr. Goa Auto Accessories Ltd.,
Honda, Satari, Goa. ... Employer/Party II

Workman/Party I represented by Ld. Adv. Shri S. P. Gaonkar.

Employer/Party II represented by Ld. Adv. Shri S. B. Bhangui.

AWARD

**(Delivered on this the 31st day of the month
of January of the year 2018)**

By Order dated 01-10-96, bearing No. 28/36/96-LAB/11163, the Government of Goa in exercise of powers conferred by Section 10 (1)(d) of the Industrial Disputes Act, 1947 (for short The Act), has referred the following dispute to the Tribunal for adjudication.

"Whether the action of the management of M/s Goa Auto Accessories Ltd., Honda, Satari in terminating the services of Shri D. S. Naik, Helper, with effect from 1-11-1995 is legal and justified?

If not, to what relief the workman is entitled?"

2. Upon receipt of the reference, it was registered as IT/50/96 and registered A/D notices were issued to both the parties. Pursuant to service of notices, Party I filed a Claim statement at Exhibit 4 and Party II filed a Written statement at Exhibit 5.

3. In short, the case of the Party I is that the Party I was employed with Party II company as a Store-Helper since 1-11-1985 and that he was

confirmed from the said date and prior to that since 1984 till the date of his permanent appointment, he was working as a temporary worker with Party II. The company issued a show cause notice-cum-chargesheet to him on 6-6-1995 alleging that he had remained absent unauthorisedly or without prior permission for 10 days in the month of August, November and December, 1994. The Party I replied to the said chargesheet stating that he had remained absent due to family problems and he apologized for the same and promised to improve his attendance in future. The Party II not satisfied with the explanation decided to hold an enquiry into the chargesheet which was held on 29-7-1995 and concluded on the same day and the Enquiry Officer held him guilty of having committed the misconduct.

4. It is also the case of the Party I that along with chargesheet issued to him, some other workmen were also issued chargesheets for similar type of misconducts. Enquiries were also held in respect of other workmen viz. Shri D. C. Sawant, Shri R. Chari, Shri V. Dessai, Shri S. Patil and Shri S. Navelkar and they were also held guilty by the Enquiry Officer of having committed misconducts on the charge of absenteeism. The Party II issued a show cause notice to Party I as well as other workmen asking them to show cause as to why their services should not be terminated by way of dismissal for having committed the misconduct. The Party I as well as other workmen thereafter approached GAAL Workers Union and requested them to intervene in the matter not to dismiss them from service. The Union accordingly addressed a letter dated 17-10-1995 to the Party II requesting the company not to impose severe punishment of dismissal and the Union assured them that the workmen would abide by the leave rules in future. The company thereafter replied to the said letter informing the Union that they have decided to dismiss the Party I and Shri Sunil D. Patil and that they have decided to lower the grade of the workmen viz. R. Chari and S. Navelkar and would suspend without wages for 10 days the workmen viz. D. C. Sawant and V. S. Dessai.

5. The Party I thereafter received a show cause notice dated 26-9-1995 from Party II asking Party I as to why strict disciplinary action including dispensing his services should not be imposed on him. The Party I replied to the said notice by his letter dated 2-10-1995 and not satisfied with his explanation with Party II vide their letter dated 27-10-1995 dismissed Party I from service w.e.f. 1-11-1995. Aggrieved by the decision, the Party I wrote to the company requesting to retain him in

the service as he is entirely dependent on the income to support his family, but Party II did not accept the demand. The Union thereafter raised an industrial dispute vide letter dated 11-11-1995 demanding reinstatement in service with full back wages. There was no settlement on the issue before the Conciliation Officer and the dispute ended in failure and thereafter the matter came to be referred to the Tribunal for adjudication. The Party I is unemployed and is facing severe hardship to maintain himself, his family and children. The termination from service of Party I with effect from 1-11-1995 is illegal and unjustified. Hence, the reference.

6. In the written statement, the Party II has claimed that the entire reference is not maintainable. The workman concerned was working with Party II as a Store-helper with effect from 12-11-1985 and his last drawn gross salary was Rs. 3428.50. The Party I was issued chargesheet on grave and serious allegation that he was habitually remaining absent without leave and an enquiry was held against him in which he fully participated and was given opportunity to defend the charges. The Enquiry Officer after conducting the enquiry found the charges proved against him and the competent authority after lawfully perusing the enquiry proceedings, findings of the Enquiry Officer, past record and other circumstances decided to take strict disciplinary action against Party I dispensing with his services. The dismissal of Party I is fully legal and justified. The reference is bad in law and ought to be rejected. Separate enquiries were held against the individual workman. Fair and proper enquiry was conducted and as charges were proved, proportionate punishment was meted out to the workman and therefore, no case exists for granting any reliefs.

7. It is a matter of record that the Party I filed an amendment inter-alia claiming that the Party II has been permanently closed down with effect from 10-3-2014 and the workmen were paid an ex-gratia @ 70 days wages per year of service in addition to gratuity and other dues and that instead of reinstatement, the Party I workmen shall be given ex-gratia @ 70 days wages per year of service in addition to gratuity and other dues. The Party II however claimed that the settlement dated 11-3-2014 between GAAL Workers Union and Party II is applicable to only 41 workmen of Party II who are on the rolls of Party II as on 10-3-2014 and as shown in the Annexure A to the settlement and as the Party I was not on the rolls of Party II as on 10-3-2014, he is not entitled to the benefit of the said settlement. The settlement

therefore cannot be extended to the workmen who were terminated before the said date of settlement.

8. Issues came to be framed at Exh. 6 are as follows:

- (1) Whether the Party I proves that the action of the Party II in termination his services w.e.f. 1-1-1995 is illegal and unjustified?
- (2) Whether the Party I proves that the punishment awarded to him in discriminatory and disproportionate?
- (3) Whether the Party I is entitled to any relief?
- (4) What Award?

9. It is a matter of record that an additional issue was framed on 30-6-2016 at Exh. 29. It is as follows:

- 1) Whether the Party I proves that the Settlement dated 11-3-2014 between GAAL Workers Union and Party II is applicable to the workmen other than retrenched 41 workmen of Party II?

10. The Party I, Shri Dattu Sagun Naik examined himself as witness No. 1 and produced on record a copy of charge-sheet dated 6-6-95 at Exh. E-1 colly, a copy of letter dated 27-10-95 written by Party II to the union at Exh. E-2, a copy of letter dated 4-3-88 issued by Party II to Party I at Exh. E-3, a copy of letter dated 9-9-88 issued by Party II to Party I at Exh. E-4, a copy of warning memo dated 11-11-89 at Exh. E-5, a copy of letter dated 7-1-93 issued by Party II at Exh. E-6, a copy of letter dated 18-3-93 issued by Party II at Exh. E-7, a copy of letter dated 18-8-93 issued by Party II at Exh. E-8, a copy of show-cause notice dated 1-9-93 at Exh. E-9, a copy of warning letter dated 28-9-93 at Exh. E-10, a copy of performance appraisal at Exh. E-11, a copy of chargesheet dated 16-3-1994 at Exh. E-12, a copy of reply to chargesheet at Exh. E-13, a copy of letter dated 7-4-1994 at Exh. E-14, a copy of letter dated 15-4-1994 at Exh. E-15, a copy of letter dated 27-5-1994 at Exh. E-16, a copy of show cause notice dated 11-6-1994 at Exh. E-17, a copy of reply dated 24-6-1994 at Exh. E-18, a copy of performance appraisal at Exh. 19, a copy of letter dated 28-6-1994 at Exh. E-20, a copy of letter dated 20-9-1994 at Exh. E-21, a copy of letter dated 22-4-1995 at Exh. E-22, a copy of letter dated 27-5-1995 at Exh. E-23, a copy of letter dated 31-5-1995 at Exh. E-24, a copy of letter dated 8-6-1995 at Exh. E-25, a copy of letter dated 29-6-1995 at Exh. E-26, a copy of letter dated 31-8-1995 at Exh. E-27, a copy of letter dated 21-7-1995 at Exh. E-28, a copy of letter dated 11-9-1995 at Exh. E-29.

11. The Party I also examined Shri Deepaji Rane Sardessai as witness No. 2 and produced on record a copy of letter dated 17-10-1995 at Exh. W-1, a copy of letter dated 27-10-1995 at Exh. W-2. Party I also examined Shri P. Gaonkar as witness No. 3 and produced on record a copy of settlement dated 11-3-2014 at Exh. 34. On the other hand, Party II examined Shri Manguesh Nabar as witness No. 1 and produced on record the copies of past service records of Shri Srikant Navelkar alongwith index at Exh. E-30 colly, copies of past service records of Shri Devanand Sawant alongwith index at Exh. E-31 colly, copies of past service records of Shri V. S. Desai alongwith index at Exh. E-32 colly, copies of past service records of Shri R. H. Chari alongwith index at Exh. E-33 colly. Party II also examined Shri Viraj Dravid as their second witness.

12. Heard arguments. Notes of Written arguments came to be placed on record by Party I as well as Party II.

13. I have gone through the records of the case and have duly considered the arguments advanced. My findings to the above issues are as follows:

- | | | |
|-------------|-----|---------------------|
| Issue No. 1 | ... | In the Negative. |
| Issue No. 2 | ... | In the Negative. |
| Issue No. 3 | ... | As per final order. |
| Issue No. 4 | ... | As per final order. |

ADDITIONAL ISSUE

- | | | |
|-------------|-----|------------------|
| Issue No. 1 | ... | In the Negative. |
|-------------|-----|------------------|

REASONS

Issue No. 1:

14. Ld. Adv. Shri S. P. Gaonkar has submitted that the Party I has been dismissed from service for the alleged misconduct of absence for a period of 54 days as per the chargesheet issued to him. The Enquiry Officer has not considered the evidence of the workmen in the findings dated 16-8-1995 and has accepted reasons for absence for the period from 18-5-1994 to 18-6-1994 for 32 days due to the sickness and also the sickness of his son and wife based on medical certificates produced by him as satisfactory. The Enquiry Officer has also admitted his reasons of absence from the period 13-6-1994 to 18-6-1994 and from 17-9-1994 to 20-9-1994 as genuine and had reduced the total unauthorized absence from 54 days to 11 days. The punishment of dismissal for 11 days absence without considering the genuine reasons is harsh and severe and ought to be held as illegal. He further submitted that mere absence is not misconduct and the employer has to prove that the unauthorized absence was willful and the workman

was guilty of habitual absence. In support of his contention, he relied upon the case of **Krushnakant B. Parmar vs. Union of India and Another, (2012) 3 SCC 178.**

15. Per contra, Ld. Adv. Shri S. B. Bhangu for Party II has submitted that the Party I has committed misconducts of remaining unauthorized absent from his duty as per the chargesheet dated 6-6-1995 and was habitually remaining absent on several previous occasions thereby disturbing the functioning of establishment inspite of several opportunities being given and therefore, the management was constrained to take the steps as per provisions of law. The Party I has nowhere denied that he had committed the misconduct. The absence of Party I without sanctioned leave shows lack of interest in the work and the habitual absence is a factor which establishes lack of interest in the work. The conduct of the Party I is nothing but irresponsible and can hardly be justified. He further submitted that the burden is on the employee who claims that there was no negligence and/or lack of interest in work by placing relevant material. In support of his contention, he relied upon the cases of (i) **Delhi Transport Corporation vs. Sardar Singh, 2004 LLR 953;** (ii) **Anant Sadashiv Chandwandkar vs. District Judge and Disciplinary Authority, District Court, Thane & Ors. 1988 I CLR 101;** (iii) **Brihan Mumbai Municipal Corporation vs. The General Secretary, BEST Workers Union & Ors, 1998 II CLR 1031;** (iv) **Tata Engineering and Locomotive Co. Ltd. vs. Mr. Suhas Madhukar Mulay & Anr. 2007 III CLR 632.**

16. There cannot be any dispute as held in the case of **Delhi Transport Corporation**, supra that when an employee habitually absents himself from duty even without sanctioned leave for a very long, it prima facie shows negligence and lack of interest in the work. It has also been held that non approval of dismissal of a workman by Industrial Tribunal was not justified when the workman has frequently absented himself. Habitual absence is a factor which establishes lack of interest in the work. It is also well established that the habitual absenteeism is gross violation of discipline and that prolonged absenteeism coupled with past record shows that the workman is not interested in the work. In the case of **L.I.C. of India vs. R. Dhandapani, 2006 I CLR 32 (SC)**, the Hon'ble Apex Court has deprecated the conduct of an employee who was unauthorisedly absent. When it is a case of chronic absenteeism and there was no reason to condone the behaviour of the workmen when he chose to remain absent time and again and the company has demonstrated that the absenteeism on the part

of the workman was prolonged and that he had been warned for the same act of misconduct, the workman deserves no leniency.

17. The Party I examined himself and Shri Deepaji Rane Sardessai. Shri Dattu Naik has stated that he was employed as store keeper from 1-11-1985 with Party II. He also stated that the show cause was issued and enquiry was conducted into the chargesheet and the Enquiry Officer submitted his findings after which a show cause notice was issued and he submitted his reply through the Union, however his services were terminated with effect from 1-11-1995 and since then he was unemployed. He also claimed that the termination of service is illegal and unjustified and the punishment awarded is harsh and disproportionate. In the cross examination, he admitted that prior to his dismissal, a domestic enquiry was held and the chargesheet was issued to him and that he had attended the enquiry held by Shri A. M. Gaikwad. He also admitted that he received a letter dated 4-3-1988 stating that he remained absent unauthorisedly from 9-2-1988 to 13-8-1988 as per Exh. E-3, wherein it is stated that he has not been reporting to work and remaining absent unauthorisedly without prior intimation and approval from 29-2-1988 till date and that he had also remained absent from 9-2-1988 to 13-2-1988 unauthorisedly and that he had been warned orally not to repeat the same and inspite of that he has continued to remain absent.

18. The Party I also admitted that he received a letter dated 9-9-1988 at Exh. E-4, wherein it was stated that he has been frequently remaining absent unauthorisedly and that in the past he has been advised orally to improve on his absenteeism and that under Clause 22, sub-clause No. VI of Certified Standing Orders remaining habitual absent is misconduct and that he was advised to improve on his attendance. He also admitted that he had received a warning memo dated 11-11-1989 at Exh. E-5 and admitted that it was mentioned in the said memo that he has been remaining absent unauthorisedly for about 18 days from January, 1989 to October, 1989 and that he has been warned in writing earlier for his absence for the year 1988 by a memo dated 9-9-1988 and that inspite of improving his attendance, he continued to remain absent unauthorisedly and that the company has taken a serious note of his habitual unauthorized absenteeism. He also admitted that he also received a letter dated 7-1-1993 from Party II, wherein it is stated that he was absenting from 2-1-1993 without prior sanction of leave. Exhibit E-6 is the said letter dated 7-1-1993 wherein it is stated that he was

absenting with effect from 2-1-1993 without prior sanction of leave and that he was called upon to report for duty on or before 11-1-1993 and explained the reason for his unauthorized absence, failure of which suitable disciplinary action would be taken against him.

19. The Party I also admitted that he received a letter dated 18-3-1993 from Party II wherein the details of his absence from 1-1-1992 was given. Exhibit E-7 is the said letter. He also admitted that he made an endorsement on the said letter in Marathi admitting that he has committed mistake and he should be pardoned. The said letter clearly shows that Party I had remained absent unauthorisedly during the year 1992 for a period of 48 days and that he had been warned earlier for his absenteeism and that inspite of improving his attendance, he continued to remain absent and that the company had taken a serious note of his absenteeism and that it would be constrained to take necessary disciplinary action against him. He also admitted that he received a letter dated 18-8-1993 at Exh. E-8 wherein it was stated that he remained absent from 10-8-1993. The said document shows that he was absent with effect from 10-8-1993 till 18-8-1993 and that he should report for work immediately. He also admitted that he received another letter dated 25-9-1993 from Party II wherein he was given a warning on receipt of his reply to show cause notice and that he was told that in future necessary action would be taken against him. The said warning memo at Exh. E-10 shows that Party I had been remaining absent habitually and unauthorisedly in the past on one or other pretext and that he had been warned in writing on many occasions.

20. The Performance appraisal at Exh. E-11 shows that the attendance in the year 1993 was poor. He also admitted that he received a chargesheet from Party II which is at Exh. E-12 and that he filed a reply at Exh. E-13 wherein he admitted his mistakes and assured the company that he would improve his attendance and requested not to proceed with enquiry and promised not to repeat such misconducts in future. He also admitted that he received a letter dated 7-4-1994 at Exh. E-14 by which he was suspended without wages, allowances and other benefits for the period of two days as punishment provided under Certified Standing Orders and the final opportunity was given to improve himself and that he received a letter from Party II dated 15-4-1994 stating that he was absenting from 12-4-1994 without prior intimation or prior sanction of leave. The letter at Exh. E-15 shows that Party I once again absented

himself with effect from 12-4-1994 without information and prior sanction of leave although he had assured the company that he would improve his attendance and had also tendered apology for his earlier habitual absenteeism and was given final opportunity to improve himself, however he again absented himself with effect from 12-4-1994 without intimation and prior sanction of leave.

21. The Party I has also admitted that he received a letter dated 27-5-1994 at Exhibit E-16 wherein it is stated that he absented himself from 13-5-1994. He also admitted that he received a show cause-cum-chargesheet at Exh. E-17 wherein the Party I was asked to explain for remaining absent unauthorisedly and without prior intimation for the period in April, 1994 till June, 1994 for about 33 days as it constitutes the gross misconduct under the Certified Standing Orders. The Party I replied to the said show cause notice dated 11-6-1994 at Exh. E-18 wherein he apologized for his mistakes and promised not to repeat such misconducts in future. The Performance appraisal for the year 1994 at Exh. E-19 shows that it is poor as it was remarked that he is very irregular worker. He also admitted that he received a letter dated 26-8-1994 from Party II by which he was suspended without wages, allowances and other benefits for a period of 10 days i.e. from 29-6-1994 to 8-7-1994 as punishment as per Exh. E-20. The suspension order as Exh. E-20 shows that the Party I has been warned in the past too for such absenteeism on the pretext of sickness, etc. and that he had promised to rectify his mistake.

22. The Party I has also been informed vide letter dated 20-9-1994 at Exh. E-21 that he has been sanctioned Priviledge leave for four days from 13-9-1994 to 16-9-1994, however it was reported that he was absenting with effect from 12-9-1994 till 20-9-1994 without prior sanction of leave for 12-9-1994 and period beyond 16-9-1994 and that he was called upon to report for duty before 24-9-1994 and explain the reason for his unauthorized absence, failing which suitable disciplinary action would be taken. He also admitted that he received a letter dated 22-4-1995 at Exh. E-22 wherein it was stated that he was absenting from 19-4-1995 without prior sanction of leave and was called upon for work on 26-4-1995 and explain the reason for his unauthorized absence. He also admitted that he received a letter dated 27-5-1995 at Exh. E-23 from Party II wherein he stated that he remained absent from 23-5-1995 and was asked to report on or before 30-5-1995 and explain the reason for his unauthorized absence. He also admitted that he

received a letter dated 31-5-1995 at Exh. E-24 wherein he was asked to report for duty before 3-6-1995 and to explain his continued unauthorized absence.

23. The Party I also admitted that he received a letter dated 8-6-1995 at Exh. E-25 wherein it was stated that he remained absent from 23-5-1995 and that he should report for duty on 12-6-1995 failing which disciplinary action would be taken against him. He also admitted that he replied to the letter dated 29-6-1995 at Exh. E-26 wherein he again apologized for his mistakes and that he would not repeat the same. The Party I also admitted that he received a letter dated 31-8-1995 at Exh. E-27 wherein it is stated that he remained absent from 22-8-1995 without prior sanction of leave and was asked to report for duty before 6-9-1995 and explain the reason for his unauthorized absence. He also admitted that he received a letter dated 21-7-1995 at Exh. E-28 from Party II wherein he was warned for not regularizing his absence for the month of June, 1995 failing which it would be treated as unauthorized absence. He also admitted that he received a letter dated 21-9-1995 at Exh. E-29 from Party II stating that he had not reported for duty till 11-9-1995 nor sent any intimation in that regard which is contrary to Certified standing orders of the company and was again called upon to report for duty immediately not later than 16-5-1995 and explain the reason for his unauthorized absence. It was also stated that he is in habit of remaining absent off and on without prior intimation/sanction of leave and was advised to desist from such recurring absenteeism failing which they would be constrained to initiate disciplinary action against him.

24. The Party I also examined Shri Deepaji Rane Sardessai. He has claimed that he was working as Maintenance Fitter since 1994 with Party II and that the workers had formed an Union and that the General Secretary of the Union had written a letter to Technical Director of Party II. The Party I was charge sheeted by Party II of having remained absent unauthorisedly. The Party II conducted enquiry and Party I was found guilty. The Party I and other workers approached him for requesting the management not to take action against them and he along with other committee members met the officials of Party II and requested them not to impose major penalty such as dismissal. The General Secretary of the Union addressed a letter dated 17-10-1995 at Exh. W-1 not to impose major penalty to which the management replied stating that they decided to dismiss the Party I and one Sunil Patil. In the cross examination, he stated that

he does not know what was the absenteeism of each of the workers, including Party I for which they were charge sheeted or their past records. He also admitted that in the letter dated 17-10-1995 at Exh. W-1, it is stated that Party I and other workers had remained absent unauthorisedly. He also admitted that the management suffers when the workers remain unauthorisedly absent.

25. The evidence of Party I therefore show that Party I has committed misconducts by remaining unauthorisedly absent without prior sanction of the authorities. The past records of Party I reveals that several opportunities were given to him to improve himself and although the Party I had admitted his misconducts and promised to improve and not to make mistakes in future, he has however inspite of the undertakings and the minor punishments, committed the same mistakes time and again and was habitually remaining unauthorisedly absent from duty without permission or sanction from his superiors. The Party I has not changed his behaviour but had committed the same mistakes, although he has been warned on several occasions. The misconducts by Party I therefore are very grave and serious which establish wilful lack of interest in the work, indiscipline and irresponsible behaviour. The charges have been proved including negligence and lack of interest in the work by Party I by looking into the period of unauthorized absence. The Party I from the year 1988 to 1995 has frequently remained absent without any rhyme or reason and has failed to bring about any improvement.

26. There is no doubt that the enquiry has been conducted in the chargesheet in a fair and proper manner by following principles of natural justice and that proper opportunity was given to Party I to defend himself. The Party I has admitted all the letters that have been issued by Party II pointing out to his unauthorized absence without sanctioned leave and that he was told that in future necessary disciplinary action would be taken against him. He was also suspended without wages for a period of 10 days from 29-6-1994 to 8-7-1994 and that he made an endorsement that he would not make such mistakes in future. He was also given final opportunity to improve himself. The evidence of Party I coupled with Shri Deepaji Rane Sardessai show that Party I has committed serious lapses by remaining absent. He had given in writing so many times that he will improve and not commit such mistakes. The record shows that every time one more opportunity was given to him. The witness of the management, Shri Manguesh

Nabar also supported the case of Party II that past record of the Party I was not good. He has also produced the past records of other employees at Exh. E-30 colly to Exh. 33 colly. to show that the past records of the Party I is not good as compared to other employees.

27. It is well settled that when an employee habitually absents himself from duty for very long time, it prima facie shows negligence and lack of interest in the work, which the Party II proved in the present case. In fact, the Party I had been cautioned, warned, berated and even suspended without wages in order to bring about the seriousness of absenteeism and was given enough opportunities to improve himself, however he continued to remain absent unauthorisedly, which shows complete lack of interest in the employment. The reliance placed by Ld. Adv. Shri S. P. Gaonkar for Party I, on **Krushnakant B. Parmar**, supra is not applicable to the case at hand as in that case the appellant unauthorisedly remained absent from duty during three consecutive periods for 36 days, 32 days and 234 days with the allegation of failure to devotion of duty and it was held that for sustaining such allegation, it must be proved that unauthorized absence was willful and if absence is due to compelling circumstances under which it is not possible to report for or perform duty, such absence cannot be held to be wilful and employee guilty of misconduct, as in that case neither enquiry officer nor appellate authority found absence of appellant willful despite his specific defense that he was prevented from attending duty and was not allowed to sign attendance register.

28. However, in the instant case enquiry was held by following principles of natural justice and the Party I clearly admitted in all letters, memos, warning letters, show cause notices, charge sheet that he has been remaining unauthorisedly absent from his duty without permission from his superior and repeatedly asked for pardon and the management had taken a lenient view in order to give an opportunity to him to improve himself in his behavior and attendance but he has failed to keep his promises and the management had to take disciplinary action for his long absence and past service record in terms of law, unlike the case of **Krushnakant B. Parmar**, supra where charges were not proved; enquiry officer failed to discuss the evidence; documents were not produced and that he was prevented from attending duty and was not allowed to sign attendance register. The Party I has thus failed to prove that the action of the Party II in terminating his services is illegal and unjustified, but on the contrary it has been

sufficiently shown by the Party II that Party I had willfully absented himself from attending the work on numerous occasion showing lack of interest in the work and therefore, the action of the management in dismissing the Party I is justified. Hence, issue No. 1 is answered in the negative.

Issue No. 2:

29. Ld. Adv. Shri S. P. Gaonkar for Party I has submitted that along with Party I, seven more workmen were issued the chargesheets for the same misconduct of absenteeism and in the evidence Shri Mangesh Nabar has admitted that only two workmen viz. Party I and one Shri Sunil Patil were dismissed from service and the other workers were still working in the factory which shows that there is a clear discrimination and disproportionate punishment awarded by Party II on Party I. He further submitted that the action of the management in dismissing the Party I for 54 days absence for whole year due to domestic problems of the Party I is a severe punishment which is a clear case of discrimination as all the seven workmen were charge sheeted for the same misconduct and enquiry was conducted during the same time. The punishment awarded to Party I is of such a nature which tantamounts to economical death of the workman. He further submitted that dismissal for misconduct for 54 days for unauthorized absenteeism is shockingly disproportionate and the workman is entitled for reinstatement and continuity in service and in support thereof, he relied upon the case of **Gangaram Nathu Satpute vs. Ahmednagar Merchants Co-operative Bank Ltd., 2016 LLR 1156.**

30. Per contra, Ld. Adv. Shri S. B. Bhangui for Party II has submitted that there is absolutely no discrimination in awarding the punishment to the Party I and other workers as when the workman does not stand on the same footing, same yardstick cannot be applied as there must be similarity between two persons between whom the discrimination has to be made and if there is no similarity between the two persons in some aspect or the other, there cannot be discrimination between the two. He further submitted and rightly so, that Party I and Sunil Patil including workmen viz. Shri R. S. Chari, Shri Vijay Dessai, Shri S. B. Navelkar and Shri Devanand Sawant were all charge sheeted for absenteeism and out of the seven, Party I and Sunil Patil were helpers and the remaining five charge sheeted workmen referred above are all operators and therefore their nature of work and their duties will not be the same. There cannot be distinction between two different

persons when they are from two different categories. The Party I and Sunil Patil were helpers and the others were operators and both cannot stand on the same footing. Moreover, the past records of Party I and Sunil Patil and that of the other workmen who were operators is not the same. The past record of Party I as discussed above is very bad compared to the past record of the other workmen and the case history of absenteeism and the past record differed from case to case and each employee was given punishment according to the gravity of misconducts committed by them.

31. It is well settled that the discretion which can be exercised by the Tribunal under Section 11-A of Industrial Disputes Act in interfering with the quantum of punishment awarded by the management, where the workman concerned is found guilty of misconduct, is available only on the existence of certain factors, like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court, or the existence of any mitigating circumstances which require the reduction of sentence or the past conduct of the workman and in the absence of such factors existing, the Tribunal cannot by way of sympathy alone exercised the power under Section 11-A of the Act and reduce the punishment as held in the case of **Mahindra and Mahindra Ltd. vs. N. B. Narawade, 2005 I CLR 803 SC**. The jurisdiction to interfere with the punishment when it is a discharge or dismissal can be exercised by the Court only when it is satisfied that the discharge or dismissal is not justified or that it finds that the punishment imposed is shockingly disproportionate to the charges proved. Punishment of termination can be said to be disproportionate, if it would appear unconscionable and actuated by malice. The jurisdiction vested with the Court to interfere with the punishment is not to be exercised capriciously or arbitrarily. It is also well settled that when charges proved are grave vis-à-vis the establishment, interference with the punishment of dismissal is not justified. In short, the jurisdiction to interfere with the punishment should be exercised only when the punishment is shockingly disproportionate to the charges proved or that it is unconscionable and actuated by malice as held in the case of **L&T Komatsu Ltd. vs. N. Udayakumar, 2008 I CLR 978**.

32. It is also important to note that there is no allegation made in the letter of GAAL Workers Union dated 17-10-1995 that the punishment is harsh or disproportionate to the misconduct committed by Party I having regard to the past

record. It is only their case that since dispensing of the service of Party I would ruin the livelihood of the workmen including their family members, the management should not take the decision of dismissing the Party I. The management in reply to the letter of Union dated 27-10-1995 had clearly stated that he was warned, suspended and several opportunities were given to improve himself. The stand of Party I of discrimination is therefore an afterthought. The prolonged absence coupled with the past record shows that the workman does not deserve any leniency. Moreover, when disciplinary proceedings have been initiated and findings of fact have been recorded in such enquiry, they cannot be interfered with unless findings are based on no evidence or are perverse. The past record of Party I is so bad that it is impossible to show any leniency to the workman and that it will amount to misplaced sympathy which would be premium over wrong doings of not coming to work which is the prime duty of the Party. There is therefore no evidence on record that the Party I and other workmen were given discriminatory punishment, although their cases stand on different footing. The entire action of the management in dismissing Party I is legal and the punishment is proportionate considering the gravity of misconduct and his past record, which is in terms of law.

33. The reliance placed on the case of **Gangaram Nathu Satpute**, supra, by Ld. Adv. Shri S. P. Gaonkar is also not applicable as in that case it was held that dismissal of services of the worker for unauthorized absenteeism of 48 days is not justified and the Court/Enquiry officer had no power to consider the charges which are not part of the chargesheet or supplementary chargesheet; unlike in the present case where it has been specifically mentioned in the show cause-cum-charge sheet that Party I had been habitually and unauthorisedly remaining absent in the past and had also been suspended which has been duly proved in the domestic enquiry. There also cannot be any dispute that the charge of habitual absence can be founded on the basis of previous cases of unauthorized absence. The workman had on many times given in writing to the management about his unauthorized absence and that he would improve and not commit such mistakes. Final opportunities were also given to him, but the Party I time and again committed the same mistakes. The case of **Gangaram Nathu Satpute**, supra was not on the same footing as all the charges were proved and the past record of the Party I was very grave and bad and therefore the said case turns on its own facts and cannot come to the aid of Party I. The Party I has not made out any case nor shown that the punishment has been disproportionate,

arbitrary, perverse or actuated by malice or that it is shockingly harsh. It is therefore, issue No. 2 is answered in the negative.

ADDITIONAL ISSUE No. 1:

34. Ld. Adv. Shri S. P. Gaonkar for Party I has submitted that the Party I has produced on record through Shri Puti Gaonkar a Settlement dated 11-3-2014 at Exh. 34, by which the dispute of the workmen of Party II had been settled. He further submitted that the Party I was a permanent workman on the date of settlement and that the Party I is entitled for the benefits given to all the workmen at the time of closure of the establishment. Exhibit 34 is the settlement by which 41 workmen on the roll of Party II were given benefits as their disputes were settled. There is no dispute that the Party II closed the manufacturing operations with effect from 10-03-2014 and the workers were offered their dues arising out of closure on 8-2-2014 as stated by Shri Viraj Narayna Dravid examined on behalf of Party II. There is no dispute that the settlement was in respect of 41 workmen who were on the rolls of the company as on 10-03-2014 and were retrenched on account of closure of manufacturing operations at Honda, Satari and that the dues of the said 41 workmen were paid to them as per the said settlement. No case is made by Party I for reinstatement as discussed in issue No. 1. The Party I was dismissed from the services with effect from 1-11-1995 much before the settlement dated 11-3-2014. The benefits of settlement therefore cannot be extended to parties other than 41 workmen specified in the said settlement. It is therefore, Party I has failed to prove that the Settlement dated 11-3-2014 between GAAL Workers Union and Party II is applicable to him. Hence, additional issue No. 1 is answered in the negative.

35. In the result, I pass the following:

ORDER

- (i) It is hereby held that the action of the management of M/s Goa Auto Accessories Ltd., Honda, Satari in terminating the services of Shri Dattu S. Naik, Helper, with effect from 1-11-1995 is legal and justified. The Party I, Shri Dattu S. Naik is therefore not entitled for any reliefs.
- (ii) No order as to costs.
- (iii) Inform the Government accordingly.

Sd/-

(Vincent D'Silva),
Presiding Officer,
Industrial Tribunal and
Labour Court.

Notification

No. 28/3/2018-LAB/Part-II/158

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 25-01-2018 in reference No. IT/22/11 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 6th March, 2018.

IN THE INDUSTRIAL TRIBUNAL AND LABOUR
COURT
GOVERNMENT OF GOA
AT PANAJI

(Before Mr. Vincent D'Silva, Hon'ble Presiding
Officer)

Ref. No. IT/22/11

Mrs. Laxmi Ambre,
Rep. by the President,
Goa State Co-operative Bank Ltd.
Employees Union,
Gurudutt Building, 3rd Floor,
Dr. Dada Vaidhya Road,
Panaji-Goa. ... Workman/Party I

V/s

The Managing Director (In charge),
The Goa State Co-operative Bank Limited,
EDC Complex, Patto Plaza,
Panaji-Goa. ... Employer/Party II

Workman/Party I represented by Shri Subhash Naik
Jorge.

Employer/Party II represented by Ld. Adv. Shri M.
H. Govekar.

AWARD

**(Delivered on this the 25th day of the month
of January of the year 2018)**

By Order dated 09-08-2011, bearing No. 28/16/
/2011-LAB/300, the Government of Goa in exercise
of powers conferred by Section 10 (1)(d) of the
Industrial Disputes Act, 1947 (for short The Act),
has referred the following dispute to this Tribunal
for adjudication.

- (1) Whether the action of the management of
M/s. Goa State Co-operative Bank Limited,
Panaji, in deducting an amount of

Rs. 10,056/- from the salary of Mrs. Laxmi Ambre, Clerk, towards the loan instalment of M/s. Mayur Shipping Private Limited, is legal and justified?

- (2) If not, what relief the workperson is entitled to?"

2. Upon receipt of the reference, it was registered as IT/22/11 and registered A/D notices were issued to both the parties. Pursuant to service of notices, Party I filed a Claim Statement at Exhibit 4. Party II filed a Written Statement at Exhibit 5.

3. In short, the case of the Party I is that the Party II has employed a large number of Managers, Officers, Clerks and Sub Staff. The branch of the Bank is headed by a Branch Manager who runs the affairs of the branch with the help of Officers, Clerks and Sub Staff. The clerical and sub staff employees of the Bank are unionized. The wages and service conditions of clerical and sub staff employees of the Bank are governed by the settlements on wages and service conditions signed by the representatives of the Bank and Goa State Co-operative Bank Employees Union from time to time. As per the provisions of the Settlement dated 09-11-2004, in case of any allegations of misconduct against any employee, firstly charge sheet has to be issued, enquiry to be held and only in case the allegations in charge sheet are proved, action can be taken against any employee for recovery of the money for proved misconduct against him. The Party I is a permanent employee of the Bank/Party II and is working in the said Bank for the last several years as a clerk. In the year 2010, the Bank/Party II illegally and without any justification deducted an amount of Rs. 10,056/- from the salary of Party I wrongly claiming that the amount is recovered towards loan installment of M/s. Mayur Shipping Private Ltd, a loanee who had obtained loan from the Party II.

4. The Party I addressed a letter dated 28-07-2010 to Party II pointing out that the action of the Bank is not legal and justified. The Party II replied to the said letter vide their letter dated 4-8-2010 but declined to return the money illegally deducted. The explanation given by the Bank in the said letter is not legally tenable and not justified. The Party II also replied to the letter addressed by the said union to the Labour Commissioner vide their letter dated 17-01-2011. The dispute was admitted in conciliation before the Assistant Labour Commissioner and Conciliation Officer and as there was no settlement, the Conciliation Officer submitted a report on failure of conciliation proceedings vide letter dated

16-05-2011. The action of the Bank/Party I in deducting an amount of Rs. 10,056/- from the salary of Party I unilaterally and without issue of charge sheet and without holding enquiry and without proving the charges against Party I is in violation of the provisions of the legally binding settlement between the Bank and the Union and in violation of principles of natural justice and in violation of provisions of labour law.

5. In the Written statement, the Party II claimed that the dispute referred to the Hon'ble Industrial Tribunal by the Government of Goa is not an 'Industrial Dispute' as defined under the provisions of Industrial Dispute Act, 1947 and hence, the Hon'ble Tribunal has no jurisdiction to try, entertain and decide the present dispute referred to it. The present claim filed by the Party I is frivolous, vexatious and abuse of process of law and hence the same is required to be dismissed in limine. The Party I was held responsible along with 7 other employees of the Vasco Branch to make good the loss suffered by the Bank on account of their gross negligence in the recovery of timely loan installments in the loan account of M/s Mayur Shipping Private Limited. The aforesaid action taken by them against the Party I is just and fair and therefore no reliefs be granted.

6. The Party I filed a rejoinder at Exhibit 6 denying the case put forth by Party II in the written statement.

7. Issues came to be framed at Exhibit 8.

8. In the course of proceedings, the parties arrived at an amicable settlement and filed the consent terms dated 22-01-2018 at Exhibit 37.

9. The consent terms are reproduced here-in-below:

- 1) That the Party II hereby pay a total sum of Rs. 52,526/- (Rupees fifty two thousand five hundred twenty six only) to the workman/ /Party I by Cheque, which is accepted by the workman/Party I as full and final settlement of her claim in the aforesaid matter.
- 2) On execution of these Consent terms, the Workman/Party I shall have no claim of whatsoever against the Bank/Party II in respect of the reliefs claimed by the workman in the above matter.
- 3) Parties agree to bear their own costs.

10. The above consent terms are signed by the workperson, Smt. Laxmi Ambre along with her representative, Shri Subhash Naik Jorge on behalf

of Party I, so also Shri Anant M. Chodankar, Managing Director of Goa State Co-operative Bank Ltd., and Adv. Shri M. H. Govekar on behalf of Party II. I have gone through the consent terms filed as above, which in my view, are just and fair and in the interest of both the Workman/Party I as well as Employer/Party II and hence the same are accepted.

11. In view of above, I pass the following:

ORDER

- (i) The reference at the instance of Workman/Party I, stands disposed of in view of the consent terms filed by both the parties at Exhibit 37.
- (ii) No order as to costs.
- (iii) Inform the Government accordingly.

Sd/-
(Vincent D'Silva),
Presiding Officer,
Industrial Tribunal and
Labour Court.

Notification

No. 28/3/2018-LAB/Part-II/159

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 31-01-2018 in reference No. IT/75/97 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 6th March, 2018.

IN THE INDUSTRIAL TRIBUNAL AND LABOUR
COURT
GOVERNMENT OF GOA
AT PANAJI

(Before Mr. Vincent D'Silva, Hon'ble Presiding
Officer)

Ref. No. IT/75/97

Shri Sunil D. Patil,
Saleli, Honda,
Satari, Goa.

... Workman/Party I

V/s

M/s. Goa Auto
Accessories Ltd.,

Honda, Satari, Goa. ... Employer/Party II

Workman/Party I represented by Ld. Adv. Shri P. Gaonkar.

Employer/Party II represented by Ld. Adv. Shri S. B. Bhangui.

AWARD

**(Delivered on this the 31st day of the month
of January of the year 2018)**

By Order dated 12-12-1997, bearing No. IRM/CON/(72)/95/6351, the Government of Goa in exercise of powers conferred by Section 10 (1)(d) of the Industrial Disputes Act, 1947 (for short The Act), has referred the following dispute to the Tribunal for adjudication.

“(1) Whether the action of the management of M/s Goa Auto Accessories Ltd., Honda, Satari, Goa in terminating the services of Shri Sunil D. Patil, Helper, with effect from 1-11-1995, is legal and justified?

(2) If not, to what relief the workman is entitled?”

2. Upon receipt of the reference, it was registered as IT/75/97 and registered A/D notices were issued to both the parties. Pursuant to service of notices, Party I filed a Claim statement at Exhibit 5 and Party II filed a Written statement at Exhibit 6.

3. In short, the case of the Party I is that the Party I was employed with Party II company as a helper in Press Shop since 1-5-1984 and that he confirmed from the services from the said date and prior to that since 1984 till the date of his permanent appointment, he was working as a temporary worker with Party II. The company issued him a show cause notice-cum-chargesheet on 6-6-1995 alleging that he had remained absent unauthorisedly or without prior permission for 10 days in the month of August, November and December, 1994. The Party I replied to the said chargesheet vide his letter dated 24-6-1995. The Party II not satisfied with the explanation decided to hold an enquiry into the chargesheet and Shri A. M. Gaikwad was appointed as Enquiry Officer and after the enquiry, the Enquiry Officer gave his findings on 12-8-1995 wherein the Party I was held guilty of having committed misconduct.

4. It is also the case of Party I that along with chargesheet issued to him, some other workmen were also issued chargesheets for similar type of misconducts. Enquiries were also held in respect of other workmen viz. Shri D. C. Sawant,

Shri R. Chari, Shri V. Dessai, Shri D. S. Naik and Shri S. Navelkar and they were also held guilty by the Enquiry Officer of having committed misconducts on the charge of absenteeism. The Party II issued a show cause notice to Party I as well as other workmen asking them to show cause as to why their services should not be terminated by way of dismissal for having committed the misconduct. The Party I as well as other workmen thereafter approached GAAL Workers Union and requested them to intervene in the matter not to dismiss them from service. The Union accordingly addressed letter dated 17-10-1995 to Party II requesting the company not to impose severe punishment of dismissal and the Union assured them that the workmen would abide by the leave rules in future. The company thereafter replied to the said letter informing the Union that they have decided to dismiss the Party I and Shri D. S. Naik and that they have decided to lower the grade of the workmen viz. Chari and S.D. Navelkar and would suspend without wages for 10 days the workmen viz. D.C Sawant and V.S. Dessai.

5. The Party I thereafter received a show cause notice dated 26-9-1995 from Party II asking Party I as to why strict disciplinary action including dispensing his services should not be imposed on him. The Party I replied to the said notice by his letter dated 2-10-1995 and not satisfied with his explanation with Party II vide their letter dated 27-10-1995 dismissed Party I from service w.e.f. 1-11-1995. Aggrieved by the decision the Party I wrote to the company requesting Party II to retain him in the service as he is entirely dependent on the income to support his family, but Party II did not accept the demand. The Union thereafter raised an industrial dispute vide letter dated 2-11-1995. There was no settlement on the issue before the Conciliation Officer and the dispute ended in failure and thereafter the matter came to be referred to the Tribunal for adjudication. The Party I is unemployed and is facing severe hardship to maintain himself and his family and children. The termination from service of Party I with effect from 1-11-1995 is illegal and unjustified. Hence, the reference.

6. In the Written statement, the Party II has claimed that the entire reference is not maintainable. The Party I was issued chargesheet on grave and serious allegation that he was habitually remaining absent without leave and an enquiry was held against him in which he fully participated and was given opportunity to defend the charges. The Enquiry Officer after conducting the enquiry found the charges proved against him

and the competent authority after lawfully perusing the enquiry proceedings, findings of the Enquiry Officer, past record and other circumstances decided to take strict disciplinary action against Party I dispensing with his services. The dismissal of Party I is fully legal and justified. The reference is bad in law and ought to be rejected. Separate enquiries were held against the individual workman. Fair and proper enquiry was conducted and as charges were proved, proportionate punishment was meted out to the workman and therefore no case exists for granting any reliefs.

7. It is a matter of record that the Party I filed an amendment inter-alia claiming that the Party II has been permanently closed down with effect from 10-3-2014 and the workmen were paid an ex-gratia @ 70 days wages per year of service in addition to gratuity and other dues and that instead of reinstatement the Party I workmen shall be given ex-gratia @ 70 days wages per year of service in addition to gratuity and other dues. The Party II however claimed that the settlement dated 11-3-2014 between GAAL Workers Union and Party II is applicable to only 41 workmen of Party II who are on the rolls of Party II as on 10-3-2014 and as shown in the Annexure A to the settlement and as the Party I was not on the rolls of Party II as on 10-3-2014, he is not entitled to the benefits of the said settlement. The settlement therefore cannot be extended to the workmen who were terminated before the said date of settlement.

8. Issues framed at Exhibit 7 are as follows:

- (1) Whether the Party I proves that the punishment of dismissal from service imposed on him is discriminatory?
- (2) Whether the Party I proves that the action of the Party II in terminating his service w.e.f. 1-11-95 is illegal and unjustified
- (3) Whether the Party II proves that the Party I is gainfully employed after termination of this service?
- (4) Whether the Party I is entitled to any relief?
- (5) What Award?

9. It is a matter of record that an additional issue was framed on 30-6-2016 at Exh. 28. It is as follows:

- 1) Whether the Party I proves that the Settlement dated 11-3-2014 between GAAL Workers Union and Party II is applicable to the workmen other than retrenched 41 workmen of Party II?

10. The Party I, Shri Sunil D. Patil examined himself as witness No. 1 and Shri Deepaji Hirbarao Rane Sardessai as witness No. 2 and produced on record a copy of letter dated 17-10-1995 by the General Secretary of the Union to the Technical Director of Party II at Exh. W-1 and a copy of reply letter dated 27-10-1995 at Exh. W-2. Party I also examined Shri P. Gaonkar as their witness No. 3 and produced on record a copy of Settlement dated 11-3-2014 at Exh. 33. On the other hand, Shri Manguesh Nabar was examined as witness of Party II and produced on record a copy of Enquiry Proceedings at Exh. E-1 colly, a copy of past service records of Mr. V. S. Desai at Exh. E-2 colly, a copy of past service records of Mr. Devanand Sawant at Exh. E-3 colly, a copy of past service records of Mr. S. B. Navelkar at Exh. E-4 colly, a copy of past service records of Mr. Rajendra Chari at Exh. E-5 colly. Party II also examined Shri Viraj Dravid as their second witness.

11. Heard arguments. Notes of Written arguments came to be placed on record by Party I as well as Party II.

12. I have gone through the records of the case and have duly considered the arguments advanced. My findings to the above issues are as follows:

- | | | |
|-------------|-----|---------------------|
| Issue No. 1 | ... | In the Negative. |
| Issue No. 2 | ... | In the Negative. |
| Issue No. 3 | ... | In the Negative. |
| Issue No. 4 | ... | As per final order. |
| Issue No. 5 | ... | As per final order. |

ADDITIONAL ISSUE

- | | | |
|-------------|-----|------------------|
| Issue No. 1 | ... | In the Negative. |
|-------------|-----|------------------|

REASONS

Issue No. 1:

13. Ld. Adv. Shri S. P. Gaonkar has submitted that the Party I has been dismissed from service for the alleged misconduct of absence for a period of 10 days during the period from 1-1-1994 to 31-12-1994 as per the chargesheet issued to him. The Enquiry Officer has not considered the evidence of the workmen when he himself has admitted that the workman has clearly mentioned about his family problems and some difficulties. The punishment of dismissal for 10 days absence without considering the genuine reasons is harsh and severe and ought to be held as illegal. He further submitted that mere absence is not misconduct and the employer has to prove that the unauthorized absence was willful and the workman was guilty of habitual absence. In support of his contention, he relied upon the case of **Krushnakant B. Parmar vs. Union of India and Another, (2012) 3 SCC 178.**

14. Per contra, Ld. Adv. Shri S. B. Bhangu for Party II has submitted that the Party I has committed misconducts of remaining unauthorized absent from his duty as per the chargesheet dated 6-6-1995 and was habitually remaining absent on several previous occasions thereby disturbing the functioning of establishment inspite of several opportunities being given and therefore, the management was constrained to take the steps as per the provisions of law. The Party I has nowhere denied that he had committed the misconduct. The absence of Party I without sanctioned leave shows lack of interest in the work and the habitual absence is a factor which establishes lack of interest in the work. The conduct of the Party I is nothing but irresponsible and can hardly be justified. He further submitted that the burden is on the employee who claims that there was no negligence and/or lack of interest in work by placing relevant material. In support of his contention, he relied upon the cases of (i) **Delhi Transport Corporation vs. Sardar Singh, 2004 LLR 953;** (ii) **Anant Sadashiv Chandwandkar vs. District Judge and Disciplinary Authority, District Court, Thane & Ors. 1988 I CLR 101;** (iii) **Brihan Mumbai Municipal Corporation vs. The General Secretary, BEST Workers Union & Ors., 1998 II CLR 1031;** (iv) **Tata Engineering and Locomotive Co. Ltd. vs. Mr. Suhas Madhukar Mulay & Anr. 2007 III CLR 632.**

15. There cannot be any dispute as held in the case of **Delhi Transport Corporation**, supra that when an employee habitually absents himself from duty even without sanctioned leave for a very long, it prima facie shows negligence and lack of interest in the work. It has also been held that non approval of dismissal of a workman by Industrial Tribunal was not justified when the workman has frequently absented himself. Habitual absence is a factor which establishes lack of interest in the work. It is also well established that the habitual absenteeism is gross violation of discipline and that prolonged absenteeism coupled with past record shows that the workman is not interested in the work. In the case of **L.I.C. of India vs. R. Dhandapani, 2006 I CLR 32 (SC)**, the Hon'ble Apex Court has deprecated the conduct of an employee who was unauthorisedly absent. When it is a case of chronic absenteeism and there was no reason to condone the behaviour of the workmen when he chose to remain absent time and again and the company has demonstrated that the absenteeism on the part of the workman was prolonged and that he had been warned for the same act of misconduct, the workman deserves no leniency.

16. The Party I examined himself and Shri Deepaji Rane Sardessai. Shri Sunil D. Patil has stated that he was working with Party II as a helper from 1-4-1984. He also stated that he was issued a chargesheet dated 6-6-1995 alleging that he was remaining unauthorisedly absent for 10 days for which he replied and the Party II conducted an enquiry into the chargesheet and after the enquiry was conducted, the Enquiry Officer submitted his findings holding him guilty on the charge of misconduct. The Party II thereafter issued a show cause notice to him and others, which he replied, however his services were terminated with effect from 1-11-1995 and since then he was unemployed. He also claimed that the termination of service is illegal and unjustified and the punishment awarded is harsh and disproportionate. In the cross examination, he admitted that he was issued a letter dated 28-4-1986 by Party II stating that he had remained absent on 23-4-1986 and he replied to the said letter vide his letter dated 1-5-1986 admitting the same.

17. The Party I also admitted that he received a letter dated 19-5-1987, wherein it was stated that he has not been reporting to work and remaining absent without prior approval and authorization from 14-5-1987 till date and that he was requested to join the duty immediately. He also admitted that he received letters dated 23-5-1987 and 2-6-1987 respectively stating that he had remained absent from the dates mentioned therein. He also admitted that he was issued a charge sheet dated 8-6-1987 for remaining absent. He also admitted that he had received a warning memo dated 20-6-1987 and a letter dated 2-1-1988 stating that he had remained absent from 10-11-1987. He has also admitted that he received memos dated 26-2-1993, 8-3-1993, 22-3-1993, 14-5-1993, 20-8-1993 and 5-11-1993 stating that he had remained absent from the dates mentioned therein. He also admitted that he submitted his explanation dated 23-3-1994 to the charge sheet dated 16-3-1994 issued to him. The Party I in the said explanation promised to improve his behaviour and attend the duties regularly. He further admitted that he received a show cause notice dated 23-3-1994 which was replied by him vide letter dated 6-4-1994 and that he apologized for the misconducts and asked for pardon and that he was also issued an order dated 7-4-1994 whereby he was suspended for two days by way of punishment. He also admitted that he received the letters dated 28-2-1995, 7-4-1995, 21-6-1995 and 19-7-1995 respectively for remaining absent.

18. The Party I also examined Shri Deepaji Rane Sardessai. He has claimed that he was working as Maintenance Fitter and that in the year 1995 he was the President of the Union and that Party I was working with Party II and he was dismissed from the services. He also claimed that the General Secretary of the Union had written a letter to Technical Director of Party II. The Party I was charge sheeted by Party II for having remained absent unauthorisedly. The Party II conducted enquiry and Party I was found guilty. The Party I and other workers approached him for requesting the management not to take action against them and he along with other committee members met the officials of Party II and requested them not to impose major penalty such as dismissal. The General Secretary of the Union addressed a letter dated 17-10-1995 at Exh. W-1 not to impose major penalty to which the management replied stating that they decided to dismiss the Party I and one Dattu S. Naik. In the cross examination, he stated that he does not know what was the absenteeism of each of the workers, including Party I for which they were charge sheeted or their past records. He also admitted that in the letter dated 17-10-1995 at Exh. W-1, it is stated that Party I and other workers had remained absent unauthorisedly. He also admitted that the management suffers when the workers remain unauthorisedly absent.

19. The evidence of Party I therefore shows that the Party I remained absent unauthorisedly and without prior permission for 10 days during the period from 1-1-1994 to 31-12-1994 and therefore violated clause 22(vi) of the Certified Standing Orders of the company for remaining absent without leave for more than three consecutive days, without sufficient grounds or proper or satisfactory explanation. The evidence also shows that besides the above period, the Party I remained absent on prior occasions also without any justification. The documents including the attendance register, show cause notices, warning memos, performance appraisal, written explanations and past records also show that he had been remaining absent unauthorisedly and without prior permission and said habitual unauthorized absence constituted gross misconduct under clause 22(vi) of the Certified Standing Orders. The past records of Party I reveals that several opportunities were given to him to improve himself and although the Party I had admitted his misconducts and promised to improve and not to make mistakes in future, he has however inspite of the undertakings and the minor punishments, committed the same mistakes time and again and was habitually remaining

unauthorisedly absent from duty without permission or sanction from his superiors. The Party I has not changed his behaviour but had committed the same mistakes. The misconducts by Party I therefore are very grave and serious which establish wilful lack of interest in the work, indiscipline and irresponsible behaviour. The charges have been proved including negligence and lack of interest in the work by Party I by looking into the period of unauthorized absence. The Party I from the year 1986 to 1995 has frequently remained absent without any rhyme or reason and has failed to bring about any improvement.

20. There is no doubt that the enquiry has been conducted in the chargesheet in a fair and proper manner by following principles of natural justice and that proper opportunity was given to Party I to defend himself. The Party I has admitted all the letters that have been issued by Party II pointing out to his unauthorized absence without sanctioned leave and that he was told that in future necessary disciplinary action would be taken against him. He was also suspended without wages for a period of 2 days from 8-4-1994 to 9-4-1994. He was also given opportunities to improve himself. The evidence on record clearly shows that Party I has committed serious lapses by remaining absent. He had given in writing so many times that he will improve and not commit such mistakes. The witness of the management, Shri Manguesh Nabar also supported the case of Party II that past record of the Party I was not good. He has also produced the past records of other employees at Exh. E-30 colly to Exh. 33 colly to show that the past records of the Party I as well as period after issuance of chargesheet is not good as compared to other employees.

21. It is well settled that when an employee habitually absents himself from duty for a very long time, it prima facie shows negligence and lack of interest in the work, which the Party II proved in the present case. In fact, the Party I had been cautioned, warned, berated and even suspended without wages in order to bring about the seriousness of absenteeism and was given enough opportunities to improve himself, however he continued to remain absent unauthorisedly, which shows complete lack of interest in the employment. The reliance placed by Ld. Adv. Shri S. P. Gaonkar for Party I, on **Krushnakant B. Parmar**, supra is not applicable to the case at hand as in that case the appellant unauthorisedly remained absent from duty during three consecutive periods for 36 days, 32 days and 234 days with the

allegation of failure to devotion of duty and it was held that for sustaining such allegation, it must be proved that unauthorized absence was wilful and if absence is due to compelling circumstances under which it is not possible to report for or perform duty, such absence cannot be held to be wilful and employee guilty of misconduct, as in that case neither Enquiry Officer nor appellate authority found absence of appellant wilful despite his specific defense that he was prevented from attending duty and was not allowed to sign attendance register.

22. However, in the instant case enquiry was held by following principles of natural justice and the Party I clearly admitted in all letters, memos, warning letters, show cause notices, charge sheet that he has been remaining unauthorized absent from his duty without permission from his superior and repeatedly asked for pardon and the management had taken a lenient view in order to give an opportunity to him to improve himself in his behavior and attendance but he has failed to keep his promises and the management had to take disciplinary action for his long absence and past service record in terms of law, unlike the case of **Krushnakant B. Parmar**, supra where charges were not proved; Enquiry Officer failed to discuss the evidence; documents were not produced and that he was prevented from attending duty and was not allowed to sign attendance register. The Party I has thus failed to prove that the action of the Party II in terminating his services is illegal and unjustified, but on the contrary it has been sufficiently shown by the Party II that Party I had willfully absented himself from attending the work on numerous occasion showing lack of interest in the work and therefore, the action of the management in dismissing the Party I is justified. Hence, issue No. 1 is answered in the negative.

Issue No. 2:

23. Ld. Adv. Shri S. P. Gaonkar for Party I has submitted that along with Party I, seven more workmen were issued the chargesheets for the same misconduct of absenteeism and in the evidence Shri Manguesh Nabar has admitted that only two workmen viz. Party I and one Shri Dattu S. Naik were dismissed from service and the other workers were still working in the factory which shows that there is a clear discrimination and disproportionate punishment awarded by Party II on Party I. He further submitted that the action of the management in dismissing the Party I for 10 days absence for whole year due to domestic problems of the Party I is a severe punishment

which is a clear case of discrimination as all the seven workmen were charge sheeted for the same misconduct and enquiry was conducted during the same time. The punishment awarded to Party I is of such a nature which tantamounts to economical death of the workman. He further submitted that dismissal for misconduct for 10 days for unauthorized absenteeism is shockingly disproportionate and the workman is entitled for reinstatement and continuity in service and in support thereof, he relied upon the case of **Gangaram Nathu Satpute vs. Ahmednagar Merchants Co-operative Bank Ltd., 2016 LLR 1156.**

24. Per contra, Ld. Adv. Shri S. B. Bhangui for Party II has submitted that there is absolutely no discrimination in awarding the punishment to the Party I and other workers as when the workman does not stand on the same footing, same yardstick cannot be applied as there must be similarity between two persons between whom the discrimination has to be made and if there is no similarity between the two persons in some aspect or the other, there cannot be discrimination between the two. He further submitted and rightly so, that Party I and Dattu S. Naik including workmen viz. Shri R. S. Chari, Shri Vijay Dessai, Shri S. B. Navelkar and Shri Devanand Sawant were all charge sheeted for absenteeism and out of the seven, Party I and Dattu were helpers and the remaining five charge sheeted workmen referred above are all operators and therefore their nature of work and their duties will not be the same. There cannot be distinction between two different persons when they are from two different categories. The Party I and Dattu S. Naik were helpers and the others were operators and both cannot stand on the same footing. Moreover, the past records of Party I and Dattu S. Naik and that of the other workmen who were operators is not the same. The past record of Party I as discussed above is very bad compared to the past record of the other workmen and the case history of absenteeism and the past record differed from case to case and each employee was given punishment according to the gravity of misconducts committed by them.

25. It is well settled that the discretion which can be exercised by the Tribunal under Section 11-A of Industrial Disputes Act in interfering with the quantum of punishment awarded by the management, where the workman concerned is found guilty of misconduct, is available only on the existence of certain factors, like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court, or the

existence of any mitigating circumstances which require the reduction of sentence or the past conduct of the workman and in the absence of such factors existing, the Tribunal cannot by way of sympathy alone exercised the power under Section 11-A of the Act and reduce the punishment as held in the case of **Mahindra and Mahindra Ltd. vs. N. B. Narawade, 2005 I CLR 803 SC.** The jurisdiction to interfere with the punishment when it is a discharge or dismissal can be exercised by the Court only when it is satisfied that the discharge or dismissal is not justified or that it finds that the punishment imposed is shockingly disproportionate to the charges proved. Punishment of termination can be said to be disproportionate, if it would appear unconscionable and actuated by malice. The jurisdiction vested with the Court to interfere with the punishment is not to be exercised capriciously or arbitrarily. It is also well settled that when charges proved are grave vis-à-vis the establishment, interference with the punishment of dismissal is not justified. In short, the jurisdiction to interfere with the punishment should be exercised only when the punishment is shockingly disproportionate to the charges proved or that it is unconscionable and actuated by malice as held in the case of **L&T Komatsu Ltd. vs. N. Udayakumar, 2008 I CLR 978.**

26. It is also important to note that there is no allegation made in the letter of GAAL Workers Union dated 17-10-1995 that the punishment is harsh or disproportionate to the misconduct committed by Party I having regard to the past record. It is only their case that since dispensing of the service of Party I would ruin the livelihood of the workmen including their family members, the management should not take the decision of dismissing the Party I. The management in reply to the letter of Union dated 27-10-1995 had clearly stated that he was warned, suspended and several opportunities were given to improve himself. The stand of Party I of discrimination is therefore an afterthought. The prolonged absence coupled with the past record shows that the workman does not deserve any leniency. Moreover, when disciplinary proceedings have been initiated and findings of fact have been recorded in such enquiry, they cannot be interfered with unless findings are based on no evidence or are perverse. The past record of Party I is so bad that it is impossible to show any leniency to the workman and that it will amount to misplaced sympathy which would be premium over wrong doings of not coming to work which is the prime duty of the Party. There is therefore no

evidence on record that the Party I and other workmen were given discriminatory punishment, although their cases stand on different footing. The entire action of the management in dismissing Party I is legal and the punishment is proportionate considering the gravity of misconduct and his past record, which is in terms of law.

27. The reliance placed on the case of **Gangaram Nathu Satpute**, supra, by Ld. Adv. Shri S. P. Gaonkar is also not applicable as in that case it was held that dismissal of services of the worker for unauthorized absenteeism of 48 days is not justified and the Court/Enquiry Officer had no power to consider the charges which are not part of the chargesheet or supplementary chargesheet; unlike in the present case where it has been specifically mentioned in the show cause-cum-charge sheet that Party I had been habitually and unauthorisedly remaining absent in the past and had also been suspended which has been duly proved in the domestic enquiry. There also cannot be any dispute that the charge of habitual absence can be founded on the basis of previous cases of unauthorized absence. The workman had on many times given in writing to the management about his unauthorized absence and that he would improve and not commit such mistakes. Several opportunities were also given to him, but the Party I time and again committed the same mistakes. The case of **Gangaram Nathu Satpute**, supra was not on the same footing as all the charges were proved and the past record of the Party I was very grave and bad and therefore the said case turns on its own facts and cannot come to the aid of Party I. The Party I has not made out any case nor shown that the punishment has been disproportionate, arbitrary, perverse or actuated by malice or that it is shockingly harsh. It is therefore, issue No. 2 is answered in the negative.

Issue No. 3:

28. It is well settled that in cases of wrongful termination of service, re-instatement with continuity of service and back wages is a normal rule, however the Party I has failed to prove that the action of Party II in terminating his service is illegal and unjustified and therefore the question whether the Party I is gainfully employed after termination of service or payment of back wages does not arise. The above issue therefore does not survive. Hence, it is answered in the negative.

ADDITIONAL ISSUE No. 1:

29. Ld. Adv. Shri S. P. Gaonkar for Party I has submitted that the Party I has produced on record through Shri Puti Gaonkar a Settlement dated 11-3-2014 at Exh. 34, by which the dispute of the workmen of Party II had been settled. He further submitted that the Party I was a permanent workman on the date of settlement and that the Party I is entitled for the benefits given to all the workmen at the time of closure of the establishment. Exhibit 34 is the settlement by which 41 workmen on the roll of Party II were given benefits as their disputes were settled. There is no dispute that the Party II closed the manufacturing operations with effect from 10-03-2014 and the workers were offered their dues arising out of closure on 8-2-2014 as stated by Shri Viraj Narayna Dravid examined on behalf of Party II. There is no dispute that the settlement was in respect of 41 workmen who were on the rolls of the company as on 10-03-2014 and were retrenched on account of closure of manufacturing operations at Honda, Satari and that the dues of the said 41 workmen were paid to them as per the said settlement. No case is made by Party I for reinstatement as discussed in issue No. 1. The Party I was dismissed from the services with effect from 1-11-1995 much before the settlement dated 11-3-2014. The benefits of settlement therefore cannot be extended to parties other than 41 workmen specified in the said settlement. It is therefore, Party I has failed to prove that the settlement dated 11-3-2014 between GAAL Workers Union and Party II is applicable to him. Hence, additional issue No. 1 is answered in the negative.

30. In the result, I pass the following:

ORDER

- (i) It is hereby held that the action of the management of M/s Goa Auto Accessories Ltd., Honda, Satari in terminating the services of Shri Sunil D. Patil, Helper, with effect from 1-11-1995 is legal and justified. The Party I, Shri Sunil D. Patil is therefore not entitled for any reliefs.
- (ii) No order as to costs.
- (iii) Inform the Government accordingly.

Sd/-
(Vincent D'Silva),
Presiding Officer
Industrial Tribunal and
Labour Court.

Department of Personnel

Order

No. 15/6/2003-PER(part) Vol. 1/718

Read: 1) Order No. 15/16/2012-PER dated 14-09-2016.

2) Order No. 15/6/2003-PER (part) Vol. 1 dated 27-09-2017.

3) Order No. 15/6/2003-PER (part) Vol. 1 dated 13-12-2017.

The ad hoc promotion of the following officers in the Cadre of Mamlatdar/Joint Mamlatdar/Assistant Director of Civil Supplies is hereby extended for the period indicated against their names:

Sr. No.	Name of the officers	Ad hoc promotion extended	
		From	To
1	2	3	4
1.	Shri Dhiren D. Banavaliker	01-01-2018	30-06-2018.

1	2	3	4
2.	Smt. Jennifer Fernandes e Arez	01-01-2018	30-06-2018.
3.	Shri Franklin Ferrao	01-01-2018	30-06-2018.
4.	Shri Pravinjay Pandit	01-01-2018	30-06-2018.
5.	Shri Saiesh Naik	01-01-2018	30-06-2018.
6.	Shri Krishna Gauns	01-01-2018	30-06-2018.
7.	Shri Ranjeet Salgaonkar	01-01-2018	30-06-2018.
8.	Ms. Janavi Kalekar	01-01-2018	30-06-2018.

This issues with the approval of Goa Public Service Commission conveyed vide their letter No. COM/II/11/42(2)/2012/1492 dated 28-02-2018.

By order and in the name of the Governor of Goa.

Harish N. Adconkar, Under Secretary (Personnel-I).

Porvorim, 6th March, 2018.

Order

No. 5/1/2018-PER/729

On the recommendation of the Goa Service Board and with the approval of the Government, the transfer and posting of the following Officers is ordered, with immediate effect and in public interest:-

Sr. No.	Name and present posting of the officer	Posted as
1	2	3
1.	Shri Shashank Tripathi, IAS, Deputy Commissioner, CCP	Deputy Collector & SDM, Tiswadi thereby relieving Shri Gurudas Tubki Desai.
2.	Smt. Sheru Appa Shirodkar, Deputy Collector (Revenue), North holding the additional charges of Deputy Collector (LA), North & Deputy Collector (DRO), North	Deputy Director (Admn.), DSLR. She shall draw her salary against the post of Deputy Director (Admn.), Archaeology.
3.	Shri Paresh M. Fal Desai, Deputy Collector & SDO-I, Salcete holding the additional charge of Administrator of Comunidade, South Zone	Deputy Collector (Revenue), South. He shall hold the charges of Administrator of Comunidade, South Zone, SLAO, WRD, Gogol & Deputy Collector (DRO), South in addition to his own duties.
4.	Shri Gurudas Tubki Desai, Deputy Collector & SDM, Tiswadi	Deputy Collector (LA), North.
5.	Smt. Trupti Manerkar, Under Secretary, Health-I	Under Secretary to Minister (Health). She shall continue to hold the charge of Under Secretary, Health-I in addition to her own duties.
6.	Shri Uday Rama Prabhu Desai, Administrative Officer, Hospicio Hospital	Deputy Collector & SDO-I, Salcete. He shall continue to hold the charge of the Administrative Officer, Hospicio Hospital in addition to his own duties.

1	2	3
7.	Shri Amir Yeshwant Parab, Deputy Collector (Revenue), South holding the additional charges of Deputy Collector (DRO), South, SLAO, WRD, Gogol & BDO, Pernem	Deputy Collector (Revenue), North. He shall hold the charges of the Deputy Collector (DRO), North & BDO, Pernem in addition to his own duties.

Shri Pravin H. Parab, Deputy Director (Admn.), Goa Medical College shall hold the charge of Deputy Director (Child Welfare), Women & Child Development in addition to his own duties thereby relieving Smt. Fransquinha Oliveira.

Shri Harish N. Adconkar, Under Secretary (Personnel-I) shall hold the charge of OSD in Goa Real Estate Regulatory Authority in addition to his own duties.

Smt. Shanti Makwana Harding, Under Secretary, Goa State Information Commission shall hold the charge of SLAO, Captain of Ports in addition to her own duties.

Shri Mahadev Araundekar, Deputy Collector and SDM, Mormugao stands relieved from the additional charge of Superintendent of Sada Jail and the same shall be handed over to Superintendent of Jails (Colvale).

Shri Abhishek Kumar, IAS (2016) is posted as Deputy Collector & SDM-II, Bardez till 15th April, 2018 thereby relieving Shri Clen Madeira of the additional charge during this period.

Smt. Fransquinha Oliveira presently on Child Care Leave shall report to Personnel Department for further orders.

All the above officers shall complete their handing over and taking over process within 05 working days and submit compliance.

By order and in the name of the Governor of Goa.

Harish N. Adconkar, Under Secretary (Personnel-I).

Porvorim, 9th March, 2018.

Corrigendum

No. 6/4/2016-PER/670

Read: Memorandum No. 6/4/2016-PER/3257 dated 24-10-2017.

In the Memorandum read at preamble, the remarks column for Serial No. 17, shall be read as "....." instead of "Promoted".

By order and in the name of the Governor of Goa.

Harish N. Adconkar, Under Secretary (Personnel-I).

Porvorim, 5th March, 2018.

Addendum

No. 6/4/2016-PER/669

Read: Memorandum No. 6/4/2016-PER/3257 dated 24-10-2017.

The following line shall be added to the Memorandum read in preamble:

"This is subject to the outcome of Civil Appeal No. 9587-9590 and 9591-9594/2016 filed in Hon'ble Supreme Court".

By order and in the name of the Governor of Goa.

Harish N. Adconkar, Under Secretary (Personnel-I).

Porvorim, 5th March, 2018.

Department of Public Health

Order

No. 4/18/2002-II/PHD/Vol. 2/607

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/II/11/30(6)/14/1054 dated 09-02-2018, Government is pleased to promote Dr. Suhani Satej Desai, Assistant Lecturer to the post of Lecturer, Department of Physiology in Goa Medical College and Hospital, Bambolim on regular basis in

Level-11 of Pay Matrix of the 7th Pay Commission [Pay Band-3, Rs. 15,600-39,100 with Grade Pay of Rs. 6,600/- (pre-revised)] and other allowances to be fixed as per rules with immediate effect.

The promotion is made against the vacancy occurred due to promotion of Dr. Susana Rasquinha Quadros, Lecturer to the post of Assistant Professor in the Department of Physiology, Goa Medical College vide Order No. 4/18/2002-II/PHD/Vol. 2 dated 05-03-2018.

By order and in the name of the Governor of Goa.

Trupti B. Manerkar, Under Secretary (Health).

Porvorim, 5th March, 2018.

Order

No. 13/25/2002-I/PHD/(Part)/680

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/II/11/56(2)/2016/1058 dated 09-02-2018, Government is pleased to promote Shri Shankar Ganesh Nimbalkar, Assistant Chemist (Food) to the post of Chemist (Food), [Group "B" Non-Gazetted] in the Directorate of Food and Drugs Administration, Bambolim in the Level-6 of Pay Matrix of the 7th Pay Commission [Pay Band-2, Rs. 9,300-34,800 with Grade Pay of Rs. 4,200/- (pre-revised)] on regular basis with immediate effect.

Shri Shankar Ganesh Nimbalkar shall be on probation for a period of two years.

The promotion is made against the vacancy occurred due to retirement on superannuation of Shri Joaquim J. Pereira, Chemist (Food) w.e.f. 31-08-2017 in the Directorate of Food and Drugs Administration.

By order and in the name of the Governor of Goa.

Maria Seomara De Souza, Under Secretary (Health).

Porvorim, 6th March, 2018.

Order

No. 13/25/2002-I/PHD/(Part)/681

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/II/11/56(2)/07/1057 dated 09-02-2018, Government is pleased to promote Shri Raju Pramod Kamat, Assistant Chemist (Drugs) to the post of Chemist (Drugs), [Group "B" Non-Gazetted] in the Directorate of Food and Drugs Administration,

Bambolim in the Level-6 of Pay Matrix of the 7th Pay Commission [Pay Band-2, Rs. 9,300-34,800 with Grade Pay of Rs. 4,200/- (pre-revised)] on regular basis with immediate effect.

Shri Raju Pramod Kamat shall be on probation for a period of two years.

The promotion is made against the vacancy occurred due to voluntary retirement of Smt. Snehaprabha V. Amonkar, Chemist (Drugs) w.e.f. 05-07-2017 in the Directorate of Food and Drugs Administration.

By order and in the name of the Governor of Goa.

Maria Seomara De Souza, Under Secretary (Health).

Porvorim, 6th March, 2018.

Order

No. 4/18/2002-II/PHD/Vol. 2/627

Read: Memorandum No. 4/18/2002-II/PHD/Vol. 2 dated 20-02-2018.

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/I/5/30(3)/2015/1039 dated 30-01-2018, Government is pleased to appoint Dr. Celia Valanki Fernandes to the post of Assistant Lecturer in the Department of Physiology in Goa Medical College & Hospital, Bambolim-Goa on temporary basis in the Level-10 of Pay Matrix of 7th Pay Commission [Pay Band-3 Rs. 15,600-39,100 + Grade Pay of Rs. 5,400/- (pre-revised)] with immediate effect and as per the terms and conditions contained in the Memorandum cited above.

Dr. Celia Valanki Fernandes shall be on probation for a period of two years.

Dr. Celia Valanki Fernandes has been declared medically fit by the Medical Board. The appointment is made subject to the verification of her character and antecedents. In the event of any adverse remarks noticed by the Government on verification of her character and antecedents, her services shall be terminated.

The appointment is made against the vacancy occurred due to promotion of Dr. Melanie Audrey Alvares, Assistant Lecturer to the post of Lecturer in Physiology, Goa Medical College vide Order No. 4-18-2002-II/PHD/Vol. 2 dated 24-07-2017.

By order and in the name of the Governor of Goa.

Trupti B. Manerkar, Under Secretary (Health).

Porvorim, 9th March, 2018.

Department of Revenue

Order

No. 26/2/2011-RD/420

Read: Order No. 26/2/2011-RD dated 14-06-2011
and Order No. 26/3/2012-RD dated 24-12-2012.

Ex-post facto approval of the Government of Goa is accorded for extension of the ad hoc appointment of Shri Savio C. Silveira and Shri Rajesh R. Pai Kuchelkar to the post of Inspector of Surveys and Land Records (Group 'B' Gazetted) in Level 6 in the 7th Pay Scales for the period from 14-05-2016 to 20-09-2017 at their present post of posting.

2. This issues with the concurrence of the Goa Public Service Commission, Panaji conveyed vide it's letter No. COM/II/11/29(1)/2013/1383 dated 22-01-2018.

By order and in the name of the Governor of Goa.

Sudin A. Natu, Under Secretary (Revenue-I).
Porvorim, 6th March, 2018.

Department of Transport

Directorate of Transport

Order

No. D.Tpt/EST/285-III/2018/1627

Read: 1) Order No. D.Tpt/EST/285-III/2015/706 dated 27-02-2015.

2) Order No. D.Tpt/EST/285-III/2015/3024 dated 31-08-2015.

Ex-post facto approval of the Government is accorded for the extension of the ad hoc promotion in respect of Shri Prakash Kholkar, Assistant Director of Transport (Group 'B' Gazetted) during the interim period i.e. from 02-03-2016 to 06-07-2017.

This is issued with the concurrence of the Goa Public Service Commission conveyed vide their letter No. COM/II/11/49(2)/2014/1509 dated 05-03-2018.

By order and in the name of the Governor of Goa.

Nikhil Desai, Director & ex officio Addl. Secretary (Transport).

Panaji, 12th March, 2018.

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